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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Marriage of NAVEEN and
SUJATA REDDY.

B206268

(Los Angeles County
Super. Ct. No. BD439483)

NAVEEN REDDY,

Appellant,

v.

SUJATA REDDY,

Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County,
Marjorie S. Steinberg, Judge. Affirmed.

Terran T. Steinhart for Plaintiff and Appellant.

Law Offices of Judith R. Forman, Judith R. Forman, Cori G. Stockman and
Mary Catherine Bohen for Defendant and Respondent.

Naveen Reddy challenges a judgment requiring him to pay \$50,000 in attorney fees sought by his ex-wife, Sujata Reddy. He argues that the trial court improperly considered his litigation conduct, and that he was forced to fund his ex-wife's "extravagance." We find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Sujata and Naveen Reddy were married on August 12, 1989 and separated on October 9, 2005. They have two sons born in 1992 and 1998.

The limited record on appeal makes it difficult to summarize the background facts.¹ The record does not include the trial court orders throughout this case, Sujata's income and expense declaration, or the report of the experts who evaluated Naveen. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 [appellant has burden of providing an adequate record on appeal].)

For purposes of this appeal, we accept the following representations by Naveen: During the course of this litigation, Naveen completed a court-ordered parenting class and a one-year domestic violence course. Dr. Suzanne Dupee was appointed to conduct a court-ordered Evidence Code section 730 evaluation.² Dr.

¹ Appellant's appendix includes only the following pleadings with attached exhibits: Sujata's attorney's declaration in support of attorney fees and costs, Naveen's opposition to the request for attorney fees, the trial court's tentative ruling, Naveen's objection's to the tentative ruling, the trial court's ruling, and the judgment of dissolution.

² Evidence Code section 730 provides in pertinent part: "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required."

Dupee concluded that Naveen was an abusive parent and recommended a parenting coach be used to help resolve his relationship issues with his children. Naveen hired Dr. Joseph Kenan because he disagreed with Dr. Dupee's report. Naveen's visits were monitored from March 2006 to January 2007. On January 23, 2007, the court terminated Naveen's visitation and ordered joint therapy of Naveen and his children with Dr. Michelle Dugan. Naveen "is aware of and admits that he has an anger management problem"

Prior to May 23, 2007, Naveen and Sujata settled the financial issues related to their dissolution. The family residence was awarded to Sujata as her separate property.³ Naveen was required to pay child support in the amount of \$4,120 per month. Both Sujata and Naveen waived spousal support. The parties agreed to remain responsible for their own attorney fees from the inception of the proceedings through the settlement of the financial issues.

Subsequently, on the eve of trial, set for August 17, 2007, Naveen and Sujata settled the custody and visitation issues. Under the terms of their agreement, Sujata was awarded sole legal and physical custody of the children. Naveen was awarded monitored visits Tuesday evening and monitored weekend visits. The visits were to be monitored either by a parenting coach or a monitor. Domestic violence orders previously entered remained in effect. The court reserved

³ Naveen was given the following as his separate property: (1) one checking account; (2) one savings account; (3) furniture, electronics, jewelry, and clothing in his possession; (4) specified furniture and items from the residence; and (5) a life insurance policy. The following property was awarded to Sujata: (1) the family residence; (2) a time share; (3) one checking account; (4) one savings account; (5) a life insurance policy; (6) retirement accounts; (7) furniture, electronics, jewelry, and clothing in her possession; (8) all interest and liabilities in Sujata N. Reddy M.D. Inc.; (9) all interest and liabilities in Lalla-Reddy Medical Corporation; and (10) a KEOGH account.

jurisdiction over issues relating to attorney fees and costs incurred after May 23, 2007.

1. *Sujata's Motion For Attorney Fees*

Sujata sought attorney fees incurred after May 23, 2007 under Family Code sections 2030 and 271.⁴ She was represented by Judith Forman. According to Forman's declaration, she is a certified specialist in family law and bills at \$600 an hour. Two other attorneys, who work in her office, have billing rates of \$450 and \$400 an hour. Fees owed Forman since May 23, 2007 totaled \$171,528. Forman stated that Naveen's income was almost twice that of Sujata. According to Forman, the medical practice awarded to Sujata carried more debt than value. Forman also concluded that the equity remaining in the residence after payment of costs of sale and taxes might not be sufficient for Sujata to pay her outstanding attorney fees.

In her declaration, Forman argued that Naveen and his attorney resisted every effort to settle the case without the need for depositions, experts, and trial preparation. A June 13, 2007 e-mail from Naveen's counsel stated: because "it is not feasible to negotiate settlement of custody/visitation issues and simultaneously litigate them, we have decided to discontinue settlement activities (including a joint conference call with Dr. Dugan), and proceed through trial in a litigation mode. We are not willing to suspend litigation activities at this time since as a practical matter it would entail postponing the trial date. If after trial, it makes sense to both sides to reinstituted settlement discussions, we will do so." Other correspondence showed that, on July 14, Naveen's counsel wrote "settlement is not reasonably possible." On July 12, Sujata's counsel requested the parties consider settlement before engaging in the significant costs accompanying trial preparation.

⁴ Undesignated statutory citations are to the Family Code.

On August 14, 2007, Naveen's counsel wrote that a settlement proposal was not acceptable because Naveen "would like to obtain unmonitored visitation" and joint legal custody.

After the depositions were taken, in order to avoid the costs associated with preparing for trial, Sujata's counsel again proposed settling the case. Naveen refused. When Naveen finally agreed to settle, it was after 98 percent of the pretrial work had been completed, including the exchange of briefs, witness lists, exhibit lists, and exhibits. The overall settlement was similar to that recommended in January 2007 by Dr. Dupee. It was not until Sujata received Naveen's trial brief that Naveen acknowledged he would require at least a parenting coach present during visits.

Forman also revealed in her declaration that Naveen threatened to close his medical practice and leave the country rather than pay Sujata's attorney fees. Redacted bills were attached to Forman's declaration to support the fee request.

Sheldon H. Lytton, co-counsel for Sujata, filed a declaration in support of Sujata's request for attorney fees. Sujata had incurred \$30,252 in fees owed to his firm. According to Lytton, his billing rate was \$410 an hour. Redacted bills were attached to his declaration.

2. Naveen's Opposition to Sujata's Request for Fees

Naveen opposed Sujata's request for fees. In his declaration, he stated that he had no significant assets and had an indebtedness of \$116,000 for attorney fees and \$150,000 for federal income taxes. Naveen had previously paid his attorney \$169,000 and had paid an expert \$20,000. Naveen stated that he earned approximately \$21,500 a month as an emergency room doctor and paid \$4,000 a month in child support, leaving him with \$9,000 a month in spendable income. Naveen was expecting a child by another woman in December 2007.

The declaration of Naveen’s attorney, Terran T. Steinhart, stated that Naveen had participated in the settlement of the economic issues and promptly responded to the requests of Sujata’s counsel to settle custody and visitation issues. Having “decided that it would be fruitless to negotiate with opposing counsel without a firm, reasonable proposal in writing as a starting point,” Steinhart “proceeded forward on the premise that the likelihood of settling these issues would be increased as the pressure of a showdown at trial became more imminent.” Steinhart concluded that Sujata incurred over twice the amount of attorney fees Naveen did during the entire course of the litigation.

With respect to child and visitation issues, Naveen argued, “[t]here is insufficient evidence upon which to find that [Naveen] is an abusive parent such that monitored visitations are in order” and “Dr. Dupee’s 730 Child Custody Evaluation Report was deficient in various respects, thereby rendering its findings and recommendations subject to disapproval.” Naveen claimed that Dr. Kenan’s deposition supported these conclusions. (Kenan’s deposition was not attached.) Naveen also argued that there was evidence that impeached Sujata’s credibility.

3. *Tentative and Final Ruling on Attorney Fees*

The only fees subject to the award were those incurred after May 23, 2007. In its tentative opinion, the court awarded Sujata fees under both sections 271 and 2030.

Naveen objected to the tentative opinion.⁵ He attached five pages from Dr. Kenan’s deposition as an exhibit to his objections. Those excerpts reveal Dr.

⁵ Naveen attached additional evidence to his objections, including evidence of child support obligations for a child outside his marriage and evidence of Sujata’s potential earnings. The court declined to consider this evidence finding it untimely. Naveen assigns no error to that ruling on appeal.

Kenan faulted Dr. Dupee for not interviewing more people, for relying too much on the believability of certain witnesses, and for ignoring other information Dr. Kenan thought important. However, Dr. Kenan did not recommend unmonitored visits between Naveen and his children.

In its final ruling, the court awarded Sujata attorney fees under section 2030 only. The court's 13-page order detailed the parties' respective positions, including Sujata's claim that she would not have sufficient funds to pay the attorney fees incurred as a result of Naveen's refusal to engage in settlement before the eve of trial, and Naveen's claim that he was waiting for Sujata to provide him a written proposal. Finding Naveen's version of events "debatable," the court concluded that Sujata's counsel had made a written proposal to settle as early as June 8, 2007, but that Naveen's counsel had responded by declaring that he and his client "have decided to discontinue settlement activities . . . and proceed through trial in a litigation mode." The court determined that "[Naveen's] decision not to discuss settlement as announced in his counsel's letter of June 13, and his subsequent refusal to participate in settlement discussions or *even to say what he thought an appropriate schedule would be*, resulted in both parties preparing for trial up to the very last minute and incurring the attendant expense." The court concluded that "[t]he consequence of [Naveen's] not following up with the June offer and holding off making any proposal until the eve of trial was the expenditure of many tens of thousands of dollars that these parties could ill afford." The court noted that Ms. Forman's firm's fees for August alone exceeded \$50,000, and concluded, after reviewing the bills, that "at least \$100,000 of Respondent counsels' bills for work after May 23 were reasonably necessary in connection with attempting to settle this matter and preparing for trial."

Addressing Naveen's conduct, the court found that it "appear[s] to have fallen far short of good faith." "[W]hen his own expert, Dr. Kenan, produced a

report which contained no substantial critique of Dr. Dupee's report or her recommendations, he should have known that proceeding to trial would be very unlikely to produce a result materially different from the agreement ultimately reached by the parties." Moreover, the court observed, Naveen provided no explanation for his failure to make an offer based on his position set forth in his own trial brief in July, when Sujata's counsel again sought to initiate settlement discussions. While noting that Naveen's conduct was "inconsistent with the spirit of Section 271," the court declined to award fees as a sanction under that section, but determined that his conduct "affects the court's view of what is 'just and reasonable' under Section 2030."

The court summarized Sujata and Naveen's financial circumstances as reflected in their income and expense declarations. Sujata had a monthly salary of \$12,000 and monthly expenses of \$14,494. Sujata's financial situation showed she had a need for payment of some of her fees. Naveen had \$13,000 a month in disposable income after payment of taxes. Naveen was ordered pay \$50,000 of Sujata's fees at the rate of \$1,000 a month. He timely appealed from the judgment on attorney fees.

DISCUSSION

The attorney fees were ordered pursuant to section 2030, which provides in pertinent part: "(a)(1) In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or

defending the proceeding during the pendency of the proceeding. [¶] (2) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon, (A) the respective incomes and needs of the parties, and (B) any factors affecting the parties' respective abilities to pay. . . ."

Section 2032 provides further guidance, explaining that the "court may make an award of attorney's fees and costs under Section 2030 or 2031 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a).)

1. *There Was No Abuse of Discretion in the Fee Award*

We review the fee award for abuse of discretion. (*In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 829.) "The discretion invoked is that of the trial court, not the reviewing court, and the trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made. [Citations.]" (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 866.) Even if the trial court could have reached a different conclusion, we must uphold the trial court's decision unless it is unreasonable. (*In re Marriage of O'Connor* (1997) 59 Cal.App.4th 877, 884.) Abuse of discretion is not presumed, but must be shown by the appellant. (*Pope v. Pope* (1951) 107 Cal.App.2d 537, 540.)

The purpose of section 2030 is to provide one party an amount adequate to properly litigate the controversy. (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 629.) The court should consider what is "just and reasonable" given the parties' relative circumstances and what was "reasonably necessary" to defend the action. (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 827.)

a. *Parties' Relative Circumstances*

The trial court's conclusions that Naveen had the ability to pay and that Sujata had the need for payment are amply supported. The record shows that Naveen's income and expense declaration reflected \$3,000 a month in excess income. The trial court required him to pay only a portion of this amount in fees by permitting him to pay the attorney fees over 50 months at the rate of \$1,000 a month. Thus, Naveen was left with \$2,000 in excess income every month, demonstrating that he has the ability to pay the ordered fees.⁶

Naveen does not provide Sujata's income and expense declaration, which was relied upon by the trial court; accordingly, he cannot show error in the court's conclusion regarding Sujata's need for assistance in paying fees. (See *Maria P. v. Riles*, *supra*, 43 Cal.3d at p. 1295 [appellant has the burden of providing an adequate record on appeal].) Nor does Naveen show any error in crediting Ms. Forman's conclusion that the equity in the family residence might be insufficient to cover Sujata's attorney fees. Abuse of discretion is not presumed, but must be shown by Naveen. (*Pope v. Pope*, *supra*, 107 Cal.App.2d at p. 540.)

Finally, Sujata's salary and assets do not preclude the fee award. Section 2032, subdivision (b) expressly recognizes that: "The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall

⁶ To the extent Naveen relies on evidence deemed inadmissible by rulings not challenged on appeal, he has forfeited any argument dependent on such evidence. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007 [issue is forfeited on appeal if not supported by argument and authority].)

cost of the litigation equitably between the parties under their relative circumstances.” (§ 2032, subd. (b).)

b. *Fees Reasonably Necessary to Defend the Action*

“‘[A] desirable objective of domestic litigation is prompt and equitable resolution of marital difficulties rather than their bitter prolongation.’” (*In re Marriage of Jovel* (1996) 49 Cal.App.4th 575, 588.) The trial court concluded that Sujata’s need for fees was increased by Naveen’s refusal to engage in settlement discussions and his refusal to accept reasonable conditions until the eve of trial.

This conclusion was supported by extensive findings negating Naveen’s argument that “one can only speculate whether the custody/visitation issues could have been settled before they were.” Specifically, the court found that Sujata had made a written proposal to settle on June 8, 2007. Naveen and his counsel “did not appear to appreciate the need for flexibility in fashioning a visitation schedule for these children. Nor did they appreciate the role that the therapist was playing in helping the boys reunify with their father.” A conference with the children’s therapist to assist in a settlement would have been in the children’s best interest, but Naveen refused to participate. On June 13, Naveen’s counsel wrote that they “‘have decided to discontinue settlement activities . . . and proceed through trial in a litigation mode.’” Sujata’s counsel’s second effort to discuss settlement was “rebuffed” by Naveen’s counsel.

The court’s conclusion that Naveen’s conduct resulted in greater cost to Sujata was amply supported. The court found that the cost of litigation increased due to Naveen’s refusal to participate in settlement discussions and refusal to make any proposal until the eve of trial. The court faulted Naveen for failing to heed the report of his own expert. After reviewing Sujata’s counsel’s bills, the court concluded that at least \$100,000 worth of the work reflected in Sujata’s counsel’s

bills was “reasonably necessary in connection with attempting to settle this matter and preparing for trial.”

Naveen does not challenge any of the items in Sujata’s counsel’s bills, and his argument that there was evidence from which the court could have concluded that he attempted to reach a settlement fails to apply the correct standard of review. We may not reweigh the trial court’s credibility determinations. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1319, 1323.) The court found Naveen’s characterization of events “debatable.” Because the trial court’s resolution of factual disputes is conclusive (*id.* at p. 1323) and because the court credited Sujata’s version of events, Naveen’s argument that there was evidence from which the court could have reached a different conclusion is irrelevant. Naveen shows no abuse of discretion in awarding Sujata \$50,000 in attorney fees.

2. The Trial Court Correctly Considered Naveen’s Lack of Good Faith in Awarding Attorney Fees Under Section 2030

In exercising its discretion the trial court was required to comply with applicable legal principles. (*In re Marriage of Zimmerman* (1993) 16 Cal.App.4th 556, 561.) Naveen argues that the trial court was precluded from considering his overall pattern of litigation because the trial court found no specific pleading sanctionable under section 271.

Section 271 provides in pertinent part: “Notwithstanding any other provision of this code, the court may base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction.”

Attorney fees awarded as a sanction under section 271 are distinguishable from those awarded under section 2030. (*In re Marriage of Bergman* (1985) 168 Cal.App.3d 742, 763.) A sanction may be awarded solely based on one party's trial tactics. (*Id.* at p. 764.) In contrast, under section 2030, although a party's tactics may be considered, the court must first consider both parties' ability to pay. (*Bergman*, at p. 764.)

Naveen recognizes that in determining the appropriateness of attorney fees under section 2030, a court may consider the extent to which the action is contested. (*Warner v. Warner* (1950) 34 Cal.2d 838, 840 (*Warner*).) The trial court did precisely that. Although it found no particular pleading sanctionable, it found the "overall pattern of litigating" relevant to determine what was "just and equitable" under section 2030. The trial court's focus on Naveen's pattern of litigating was the same as the *Warner* court's focus on the extent the action was contested, which in *Warner* was shown by the husband's threats to inflict bodily injury on the wife, the husband's statements that the wife would never get anything from him and that his assets were hidden, and the numerous financial disputes regarding significant assets. (*Warner*, at p. 842; see also *Pope v. Pope*, *supra*, 107 Cal.App.2d at p. 539 [court may consider the nature and extent of the contest].) As in *Warner*, the trial court here was permitted to consider the extent to which Naveen's conduct in resisting settlement prolonged the litigation and compelled Sujata to incur additional legal fees.

Although *Warner* was decided under former Civil Code section 137, a predecessor to section 2030, the same factors are relevant under section 2030.⁷ "It

⁷ Former Civil Code section 137 provided: "During the pendency of any such action [for divorce or separate maintenance] the court may, in its discretion, require the husband or wife, as the case may be, to pay as alimony or as costs of

is well established that in determining a reasonable fee in dissolution cases the trial court is permitted to consider various factors: namely, the nature of the litigation, its complexity, *the nature and extent of the contest*, the amount involved, the financial circumstances of the parties, the skill required, the professional standing and reputation of the husband's attorneys and the attorneys selected by the wife. [Citations.] [¶] . . . Certainly a desirable objective of domestic litigation is prompt and equitable resolution of marital difficulties rather than their bitter prolongation.'" (*In re Marriage of Jovel*, *supra*, 49 Cal.App.4th at p. 588, italics added.) The trial court correctly considered the impact of Naveen's litigation strategy on the "extent of the contest" when awarding Sujata fees under section 2030.

3. *Naveen Was Not Forced To Fund Sujata's "Extravagance"*

Naveen argues that the award of fees did not achieve litigation parity because Sujata's attorney fees were more than double his own. He argues that sections 2030 and 2032 do not permit the court to make him pay for Sujata's "extravagance" or "advantage," but only allow parity between the spouses.

action or as attorney's fees any money necessary for the prosecution of the action" (*Warner*, *supra*, 34 Cal.2d 838, 840.)

Former Civil Code section 137 was modified and eventually replaced by former Civil Code section 4370, which provided in part "'In respect to services rendered or costs incurred after the entry of judgment, the court may award such costs and attorneys' fees *as may be reasonably necessary* to maintain or defend any subsequent proceeding therein, and may thereafter augment or modify any award so made.'" (*In re Marriage of Hublou* (1991) 231 Cal.App.3d 956, 961.) In 1985, the basis for a fee award was expanded to include an award for a party's bad faith and after modifications, that statute eventually was placed in section 271. (*Id.* at p. 698; Civ. Code, former § 4370.6, now Fam. Code, § 271.)

There is no merit to Naveen's argument that he has been forced to fund Sujata's "extravagance." That Naveen chose to hire an attorney who described himself as having "limited experience in family law litigation" did not require Sujata to do the same. Indeed, by his own account, Naveen relied on the experience of Sujata's attorney. In attempting to explain his failure to make a settlement proposal, he asserted that his counsel had "only limited knowledge and experience with respect to hotly contested custody/visitation issues, especially when laced with domestic violence issues. On the other hand, [Sujata's] counsel is a \$600 per hour Certified Family Law Specialist with three decades of knowledge and experience in handling such issues. Therefore, as between the two counsel, it seemed appropriate that the original written proposal regarding settlement of the custody/visitation issues should come from Respondent's counsel who knew the deal points that would have to be agreed upon by the parties" At most Naveen shows that Sujata spent more on her attorney than he spent on his.

In any event, even assuming Sujata was "extravagant" in her choice of counsel, this did not operate to Naveen's detriment. Of the more than \$200,000 in fees incurred after May 23, 2007, the court awarded Sujata only \$50,000, or 25 percent. Significantly, Naveen himself incurred twice this amount in legal fees after May 23. In short, Naveen can hardly complain of having to pay only half the amount of legal fees he himself incurred, employing less experienced and less costly counsel.

DISPOSITION

The judgment is affirmed. Respondent shall have her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.